

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0497
Withholding Tax
For 2003 Through 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Withholding Tax.

Authority: IC 6-3-4-8

Taxpayer maintains that the Department's assessment for withholding tax is incorrect.

STATEMENT OF FACTS

The taxpayer was a sole proprietorship in 2001 and 2002. Taxpayer became a corporation in 2003. The taxpayer's sales are primarily marketing signs for realty agents, apartment complexes, contractors, property managers, and retail establishments. The audit was for the years January 1, 2003, through June 30, 2005. Some records were provided for 2003 and no records were provided to the Department's auditor for January 1, 2004, through June 30, 2005. In the records that were available during the audit, there were payments made to employees in the first quarter; however these payments were not included in the tax return figures or the general ledgers. The Department issued a "BIA" or best information available assessment. Taxpayer disagreed with the Department's decision and submitted a protest letter to that effect.

DISCUSSION

I. Withholding Tax.

Taxpayer maintains that the Department's assessment for withholding tax is incorrect.

IC 6-3-4-8(a) states in part that each "employer making payments of any wages . . . shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section" Pursuant to IC 6-3-4-8(a), if an employer is required by the Internal Revenue Code to withhold federal taxes, that employer must do the same for state income tax purposes.

The taxpayer's representative contends that the amounts shown on the Department's audit summary sheet in the amount of \$957.24 for 2003, \$1,441.94 for 2004, and \$2,059.10 for the

period ending June 30, 2005, are incorrect. The representative at hearing provided a calculation and the associated returns received from an automated payroll service. The representative states that the proper amount of withholding due is \$1,641.08 for 2003, \$2,059.120 for 2004, and \$713.35 for the period ending June 30, 2005.

FINDING

Taxpayer's protest is sustained subject to audit verification. The application of the ten percent negligence penalty will be dependant upon the outcome of audit's review. The ten percent penalty will be applicable to any remaining tax liability.

BRK/JMM/DK – 06/29/03